

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STEVEN RAY CHANCE (a.k.a. ARYAN RAY GARRETT)
v. STATE OF TENNESSEE

Appeal from the Circuit Court for Cheatham County
No. 13599 Robert E. Burch, Judge

No. M2006-00614-CCA-R3-CO - Filed October 11, 2006

This matter is before this Court upon the Petitioner's appeal from an order of the trial court denying a petition "re-submitting petition for suspension of sentence." The State has filed a motion requesting that this Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. The State's motion is granted. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed Pursuant to Rule 20, Tenn. Ct. Crim. App. R.

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Steven Ray Chance, Pro Se.

Paul Summers, Attorney General and Reporter; Blind Akrawi, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

This Court has previously summarized the underlying facts and proceedings leading to the Petitioner's convictions and sentences as follows:

In April 2000, the petitioner went to the victim's mobile home where his girlfriend, Sherry Moon, was staying with the victim. The petitioner, armed with a gun, kicked in the door of the mobile home, and the victim fled. Two days later, the petitioner led the police on a car chase after an officer tried to arrest him. Pursuant to a plea agreement, the petitioner entered *nolo contendere* pleas to aggravated burglary, aggravated assault, and evading arrest, and received an effective eight-year sentence. The State dismissed other charges pursuant to the agreement.

See Steven Ray Chance v. State, No. M2002-02991-CCA-R3-PC (Tenn. Crim. App., at Nashville, July 16, 2003).

The Petitioner has previously sought post-conviction relief based upon allegations of ineffective assistance of counsel. This Court affirmed the trial court's denial of post-conviction relief. See id. Thereafter, the Petitioner sought relief from his conviction and sentence in a pleading entitled "Affidavit of Specific Negative Averment." This Court upheld the trial court's denial of relief in that proceeding. See State v. Steven Ray Chance, No. M2004-01729-CCA-R3-CD (Tenn. Crim. App., at Nashville, Nov. 16, 2004). Thereafter, the Petitioner filed a petition seeking habeas corpus relief. He asserted as grounds that the indictments against him were invalid, that the Petitioner was denied his right to self representation, that the trial court conducted ex parte proceedings, and that mandatory court records and discovery material was not disclosed to the Petitioner. This Court affirmed the trial court's denial of habeas corpus relief. See Steven Ray Chance (Ayrán Ray Garrett) v. David G. Mills and State of Tennessee, No. W2006-00243-CCA-R3-HC (Tenn. Crim. App., at Nashville, May 31, 2006).

On January 25, 2006, the Petitioner, who is an inmate housed in the Department of Correction, filed a petition styled "re-submitting petition for suspension of sentence." In this petition, the Petitioner alleges, among other things, that he was forced into accepting the plea agreement, that he was denied his constitutional right to argue his own case, that the arrest warrant initially filed against him was illegal, that he was denied the constitutional right to represent himself, and that he was denied all court records and discovery to prove miscarriages of justice and violations of the constitution. In the petition, he also disputed the underlying facts leading to his guilty plea and conviction and asserted that he was innocent of the charges. He also alleges that during the period he has been incarcerated he has gained knowledge, wisdom and understanding. He therefore requested that the trial court suspend the balance of his sentence and allow him to be released.

The trial court entered an order denying the re-submission of the petition for suspension of sentence. It is from the order of the trial court denying a suspended sentence that the Petitioner appeals.

As the State has noted, a motion to reduce a sentence must be filed within one hundred and twenty days after the date the sentence is imposed. See Tenn. R. Crim. P. 35(a). We also note that a trial court generally does not have jurisdiction over a defendant's sentence after a defendant is actually transferred to the custody of the Department of Correction. See Tenn. Code Ann. § 40-35-212(d)(1). The Petitioner herein is serving a felony sentence in the Department of Correction. His release from custody is properly determined by the Department of Correction in conjunction with the Parole Board. We conclude that the trial court did not err by denying the petition for suspension of sentence. The judgment of the trial court is affirmed in accordance with Rule 20 of the Rules of the Court of Criminal Appeals of Tennessee.

DAVID H. WELLES, JUDGE